

REMARKS

Reconsideration and allowance are respectfully requested. Claims 1, 9, 13 and 21 have been amended. Claims 12 and 23 have been canceled. Thus, claims 1-11, and 13-22 are pending.

The “Conclusion” paragraph of page 4 indicating that the outstanding Office Action is final was included by error. The Examiner confirmed in a telephone conversation with the undersigned that the January 11, 2005 Office Action is non-final.

Claims 1 and 13 stand rejected under 35 U.S.C. 112, first paragraph. Claims 1 and 13 have been amended to obviate the rejection. In particular, the term “non-powered” has been changed to “non-driving” to make it clear that the wheel structure (claim 1) and the means for supporting (claim 13) are each a non-driving structure. In other words, the motive structure (claim 1) and the means for moving (claim 13) cause movement of the apparatus. The wheel structure and the means for supporting have no drive function but function in merely towing the apparatus (e.g., provide a supported rolling function).

Claims 1-7, 9-19 and 21-23 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Williams et al. in view of Feliz. This rejection is respectfully traversed. Independent claims 1 and 13 have been amended to include the subject matter of claims 12 and 23, respectively. In particular, each of the independent claims recites at least one lift jack constructed and arranged to lift a portion of the body with respect to the ground to enable the hitch structure to be in a position to be coupled with a vehicle for towing the apparatus. As noted in Applicant’s previous responses, the Examiner has failed to show that the prior art of record teaches or suggest a lift jack as claimed. Thus, Applicant traverses the Official Action as incomplete because it fails to answer the material traversed. (See MPEP §707.07(f) “Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant’s argument and answer the substance of it.”).

It is submitted that one of ordinary skill in the art would not provide a lift jack on either the vehicle of Feliz or Williams et al., since each of these vehicles is not intended

to be towed. Neither Felix nor Williams et al. teaches or suggests that his vehicle should have a hitch to be towed by second vehicle to another location let alone, a lift jack to enable coupling of a hitch with a second vehicle.

Furthermore, the Examiner states that Williams et al. does not disclose “the hopper”. Applicant notes that Williams et al. also does not teach the claimed dispensing structure or the hitch structure. The Examiner cites Felix as disclosing a hopper, dispensing structure and hitch structure and contends that it would have been obvious to modify the vehicle of Williams et al. to include the hopper, dispensing structure, and hitch structure as disclosed by Felix “to obtain an easily maneuverable dispensing apparatus.” Applicant submits that one of ordinary skill in the art would not modify Williams et al. in the manner suggested by the Examiner since there is no suggestion to provide a hopper and dispensing structure on the automobile of Williams et al., which is configured to easily maneuverable for curbside parking. One would not make the automobile of Williams et al. more cumbersome and less maneuverable by modifying it in the manner suggested by the Examiner. “The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.” In re Fritch, 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992). In re Mills, 16 USPQ2d 1430 (Fed. Cir. 1990). “Teachings of references can be combined only if there is some suggestion or incentive to do so.” In re Fine, 5 USPQ2d 1596,1600 (Fed. Cir. 1988) (quoting ACS Hosp. Sys. v. Montefiore Hosp., 221 USPQ 929, 933 (Fed. Cir. 1984)) (emphasis in original).

With regard to claims 9 and 21, theses claims have been amended to recite that the source of aggregate material is a dump truck and the apparatus includes push rollers constructed and arranged to engage tires of the dump truck so that the apparatus pushes the dump truck while dispensing aggregate material. The prior art of record does not teach or suggest such push rollers to push a dump truck. Felix rollers 417 are not constructed and arranged to engage a tire of a dump truck so as to push the dump truck.

For these reason, the rejection of claims 1 and 13 and the claims that depend there-from is improper and should be withdrawn.

Claims 8 and 20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Williams et al. and Feliz and further in view of Vangaever. These claims depend from independent claims 1 and 13, respectively, and are considered to be allowable for the reasons advanced above, and for the additional reason that the added subject matter is not taught or suggested by the prior art of record.

All rejections having been addressed, it is respectfully submitted that this application is in condition for allowance and a Notice to that effect is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "E. Stemberger", written in a cursive style.

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